UNITED STATES TAX COURT
WASHINGTON, DC 20217

FRANCES M. SCOTT & GALEN L. AMERSON,	)	
Petitioners,	)	
v.	)	Docket No. 26717-14.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

Petitioners filed a "Motion to Dismiss All Actions". We will deny the motion for the following reasons:

1. Petitioners complain that they are deprived of a jury trial. However, the "right of trial by jury" in Amendment VII to the U.S. Constitution extends, the amendment says, only to "suits at common law". At common law, one was not generally entitled to sue the sovereign, see Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272, 280-84 (1855), so there is no constitutional right to a jury in a suit against the Government in Tax Court. As we have previously explained, in Swanson v. Commissioner, 65 T.C. 1180, 1181 (1976):

> In Wickwire v. Reinecke, 275 U.S. 101 (1927), the Supreme Court made it clear that there is no constitutional right to jury trial in tax matters, stating:
>
> > It is within the undoubted power of Congress to provide any reasonable system for the collection of taxes and the recovery of them when illegal, without a jury trial--if only the injunction against the taking of property without due process of law in the method of collection and protection of the taxpayer is satisfied.

In Olshausen v. Commissioner, 273 F.2d 23 (9th Cir. 1959), cert. denied, 363 U.S. 820 (1960), rehearing denied 364 U.S. 855, it was held that the statutory procedure provided by the Internal Revenue Code of 1939 for issuance of the notice of deficiency and the procedure for the redetermination of that deficiency by petition to the Tax Court did not deprive the taxpayer to any right to trial by jury. The court said:

> Having taken advantage of the deficiency notice procedure by filing a petition in the Tax Court without paying the tax first, petitioner now makes the claim that he was deprived thereby of a jury trial. Such deprivation was due to his own act. If he desired a jury trial, he should have paid the tax first and then sued for a refund in the district court. There is no right to a jury trial without paying first as a statutory matter (Flora v. United States, 1958, 357 U.S. 63, 78 S.Ct. 1079, 2 L.Ed.2d 1165) and no right to a jury trial at all in tax matters as a constitutional requirement. (Wickwire v. Reinecke, 1929, 275 U.S. 101, 48 St.Ct. 43, 72 L.Ed. 184). * * *

2. Petitioners allege that the undersigned judge has a conflict of interest that prevents him from deciding this case, but they do not explain intelligibly what it is. We are not aware of any conflict of interest and cannot assume that one exists. Moreover, if a conflict of interest did exist, the remedy would be to assign the case to a judge on this Court who does not have a conflict, not to dismiss the case. Petitioners allege that the undersigned "et al" (the Latin *et alia* means "and others") "are financial beneficiary(s) and is fully aware of his financial benefit of the tax code". This seems to be a suggestion that all of the Judges of the Tax Court have a supposed conflict of interest. If this were so, then the Rule of Necessity would permit a Judge to retain responsibility for the case. See United States v. Will, 449 U.S. 200, 213-216 (1980); Cupp v. Commissioner, 65 T.C. 68, 86-87 (1975), aff'd without published opinion, 559 F.2d 1207 (3d Cir. 1977).

3. Petitioners advance the theory that the Internal Revenue Code is not law because the Sixteenth Amendment was not properly ratified. In support of this theory they cite a book entitled "The Law That Never Was", by Bill Benson and Martin Beckman, which they say was published in 1985. Petitioners must have noticed that in the intervening 30 years, income tax returns have continued to be required and filed, and income taxes have continued to be paid by taxpayers, collected by the IRS, and enforced by the courts. In fact, litigation involving

Mr. Benson himself has shown his theory to be without merit. The United States Court of Appeals for the Seventh Circuit stated:

> Benson's claim to have discovered that the Sixteenth Amendment was not ratified has been rejected by this Court in Benson's own criminal appeal. United States v. Benson, 941 F.2d 598, 607 (7th Cir.1991) ("In Thomas, we specifically examined the arguments made in The Law That Never Was, and concluded that 'Benson ... did not discover anything.'" (quoting United States v. Thomas, 788 F.2d 1250, 1253 (7th Cir.1986))). "[W]e have repeatedly rejected the claim that the Sixteenth Amendment was improperly ratified. One would think this repeated rejection of Benson's Sixteenth Amendment argument would put the matter to rest." Benson, 941 F.2d at 607 (citations omitted).

United States v. Benson, 561 F.3d 718, 723 (7th Cir. 2009). See also Brown v. Commissioner, T.C. Memo. 1987-78.

4. If we were to grant the petitioners' motion and dismiss their petition, the effect would not be as they seem to suppose. Section 7459(d) provides:

> If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary.

That is, dismissal of the case would sustain the IRS's determination of the petitioners' liability. To obtain a determination that they do not owe the tax, petitioners must prevail in this suit on the merits of their petition.

Petitioners are advised that section 6673(a) authorizes the Tax Court to require the taxpayer to pay the United States a penalty of as much as $25,000 whenever it appears to the Court that the taxpayer instituted or maintained the proceeding before the Court primarily for delay or that the taxpayer's position in the proceeding is frivolous or groundless. Petitioners are urged to forego the frivolous arguments advanced in their motion to dismiss and, instead, to prepare to litigate valid issues at the trial of this case.

It is

ORDERED that petitioners' motion to dismiss is denied. The case will be tried as scheduled.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
September 8, 2016